

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\*\*\*\*\*  
PINNACLE INSURANCE COMPANY, INC., \*  
\*  
Plaintiff \*  
\*  
v. \* MISC. BUSINESS DOCKET  
\* No.  
\*  
AMERICAN RE-INSURANCE COMPANY, \*  
\*  
Defendant \*  
\*\*\*\*\*

AFFIDAVIT OF CARMIN C. REISS, ESQ.

I, Carmin C. Reiss, Esq., on oath depose and say as follows:

1. I am the President of Resolutions, LLC and make this affidavit in that capacity.
2. The information contained in this affidavit is based on my personal knowledge and review of certain documents and computer data in the possession of Resolutions, LLC.
3. In 1998, Professor Eric D. Green, a professor of law at Boston University School of Law and a principal of Resolutions, LLC, provided neutral mediation services to Compania Minera Maricunga and Fluor Daniel, Inc. pertaining to a dispute between them.

4. At that time, Professor Green had nearly twenty years of professional experience as a mediator and well over thirty hours of mediation instruction, in addition to over fifteen years of experience as a Professor of Dispute Resolution at Boston University School of Law.

5. Resolutions, LLC had in 1998 a standard practice of requiring its mediation clients to execute a written mediation agreement containing confidentiality obligations and invoking the protection of G.L. c. 233, § 23C and any applicable rules and laws protecting settlement negotiations. To the best of my knowledge and belief, this practice was followed in the Compania Minera Maricunga/Flour Daniel matter, although Resolutions, LLC no longer has a signed copy of the Mediation Agreement due to the destruction of the paper case file (see paragraph 7).

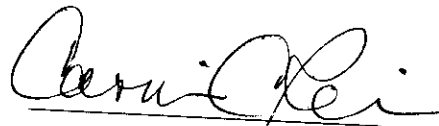
6. I examined the subpoena attached hereto as Exhibit A and conducted a good faith search to determine if Resolutions, LLC had any documents in its possession, custody, or control that would be responsive to this subpoena, personally and through staff members acting at my direction.

7. As a result of this search I have determined that in 2003, Resolutions, LLC destroyed all paper files relating to the mediation in accordance with its normal and usual document destruction policy.

8. Therefore, the only documents currently in the possession, custody, or control of Resolutions, LLC that are responsive to the subpoena are located on the company's computer hard drive. These documents consist of:

- The Mediator's notes
- The Mediation Agreement and Schedule
- An Agreement in Principle
- A Mediation Attendee List
- Four 1-page fax cover sheets to different individuals
- Four administrative letters
- Three letters communicating settlement proposals and responses between the parties to the mediation
- One draft communication relating to the subpoena at issue
- Accounting/Billing records reflecting Resolutions, LLC fees and expenses for mediation services and payments thereon.

Signed under the pains and penalties of perjury this 6th day of May, 2004.

A handwritten signature in cursive script, reading "Carmin C. Reiss". The signature is written in dark ink and is positioned above a horizontal line.

Carmin C. Reiss, Esq.

CERTIFICATE OF SERVICE

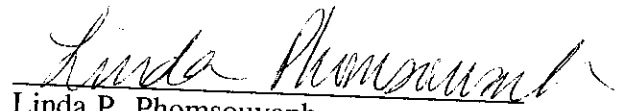
I, Linda P. Phomsouvanh, hereby certify that I have this day served copies of the foregoing Affidavit of Carmin C. Reiss, Esq. upon the parties to the underlying action by sending copies thereof via facsimile transmission and by U.S. Mail, by their respective counsel as follows:

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Attorneys for defendant American Re-insurance Company

DATED: May 14, 2004

  
Linda P. Phomsouvanh